

meeting do not constitute actions of the Commission, nor do they necessarily represent the basis for any Commission action. Comments made by a Commissioner or an employee of the Commission may be advanced for purposes of discussion or argument, or as an aside, and may not reflect the views or ultimate position of that Commissioner or employee. Reasons for decisions stated by a Commissioner at an open meeting may be later changed by that Commissioner, as may a Commissioner's vote. For these reasons, persons who choose to act on the basis of discussions at open meetings do so entirely at their own risk and without any assurance that the Commission's final decisions will be reflective of the discussions or initial vote.

§ 2701.7 Expedited closing procedure.

(a) *Policy.* Although it is the general policy of the Commission to open to the public meetings that may be subject to closure, including meetings concerning adjudication of cases, the Commission may find it necessary in the public interest to close meetings. The purpose of this section is to provide an expedited closing procedure under 5 U.S.C. 552b(d)(4). The Commission has determined that, inasmuch as the Commission's responsibilities are almost entirely adjudicatory, a majority of its meetings may properly be closed under 5 U.S.C. 552b(c)(10). Although the Commission has to date held few meetings, those that have been held concerned the adjudication of cases and could properly have been closed.

(b) *Procedure.* A meeting may be closed if a majority of either the members of the Commission or of a panel of three or more Commissioners votes by recorded vote at the beginning of such a meeting to close it to the public. The record of the vote shall reflect the vote of each voting member and shall be made available to the public. A public announcement of the time, place, and subject matter of the meeting shall be made at the earliest practicable time, except to the extent that such information is exempt from disclosure under 5 U.S.C. 552b(c). Section 2701.3 does not apply to meetings closed under this section.

PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

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AUTHORITY: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95-165 (30 U.S.C. 801 *et seq.*); 5 U.S.C. 552; Pub. L. 104-231, October 2, 1996, 110 Stat. 3048.

SOURCE: 45 FR 33607, May 20, 1980, unless otherwise noted.

§ 2702.1 Purpose and scope.

The Federal Mine Safety and Health Review Commission (Commission) is an independent agency with authority to adjudicate contests between the Mine Safety and Health Administration of the U.S. Department of Labor and private parties, as well as certain disputes solely between private parties, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* The purpose of the rules in this part is to establish procedures for implementing the Freedom of Information Act, 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048; to provide guidance for those seeking to obtain information from the Commission; and to make all information subject to disclosure pursuant to this subchapter and FOIA, and not otherwise protected by law, readily available to the public. Additional guidance on obtaining information from the Commission can be found in the document entitled "FOIA Guide," which is available upon request from the Commission and on the Commission's Web site (<http://www.fmshrc.gov>). These rules apply only to records or information of the Commission or in the Commission's custody. This part does

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not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's Rules of Procedure in 29 CFR part 2700.

[72 FR 71790, Dec. 19, 2007]

§ 2702.2 Location of offices.

The Commission maintains its Headquarters office at 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001. It has two offices for Administrative Law Judges, one at 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, and the other at 1244 Speer Boulevard, Suite 280, Denver, Colorado 80204-3582.

[67 FR 60862, Sept. 27, 2002]

§ 2702.3 Requests for information.

(a) *Content of request.* All requests for information should be in writing and should be mailed or delivered to Chief FOIA Officer, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001-2021. See FOIA Guide for more information on the submission of requests, including requests submitted electronically or by facsimile. The words "Freedom of Information Act Request" should be printed on the face of the envelope. Requests for information shall describe the particular record requested to the fullest extent possible and specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate requesters as to form or format if the record is readily reproducible in the requested form or format. When requesters do not specify the preferred form or format of the response, the Commission shall respond in the form or format in which the record is most accessible to the Commission.

(b) *Response to request.* The Chief FOIA Officer will determine whether to comply with the request. Except in unusual circumstances, as described in paragraph (c) of this section, the determination will be made within 20 working days of receipt. Appeals of adverse decisions may be made, in writing, to the Chairman of the Commission, at the same address, within 20 working days of the decision. The sitting Com-

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missioners, by majority vote, will decide appeals within 20 working days after receipt. In the event of a tie vote of those Commissioners, the Chief FOIA Officer's initial determination will be deemed approved by the Commission. Records to be disclosed shall be provided with the initial letter setting forth the determination as to the request or shall be sent as soon as possible thereafter.

(c) *Processing of request.* (1) In unusual circumstances as described in this paragraph, when additional time is needed to respond to the initial request, the Commission shall acknowledge the request in writing within the 20-day period, describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in paragraph (d) of this section. With respect to a request for which a written notice has extended the time limit by 10 additional working days, and the Commission determines that it cannot make a response determination within that additional 10 working day period, the requester will be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of paragraph (d) of this section. For purposes of this paragraph, "unusual circumstances" that may justify a delay are:

(i) The need to search for and collect the requested records from other facilities that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request;

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a